IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 258 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CHETAN INDUSTRIES

Appearance:

MR MANISH R BHATT for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 09/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The Tribunal has referred following question to this Court under section 256(1) of the Income-tax Act, 1961 :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the activity of the assessee of twisting flat yarn was a manufacturing activity so as to be regarded as being an activity for manufacturing and/or production of article so as to entitle the assessee to the deduction under section 80J of the Income-tax Act, 1961 ?"

We have heard the learned counsel for the parties. In Commissioner of Income-tax, Gujarat-I v. Lakhtar Cotton Press Co. (Pvt.) Ltd., (1983) 142 I.T.R. 503, the phrase "manufacture or processing of goods" has been interpreted to mean that business of ginning and pressing of cotton is an operation which results in change of commodity and is processing of goods and, therefore, the Company engaged in such activity is an 'Industrial Company' entitled to concessional rate of tax. Similar view was taken by the High Court in I.T.R. 27/85, which was decided on September 4, 1985 and the S.L.P. filed against the said decision was rejected by the Supreme Court on January 14, 1991, which is evident from (1991) 187 I.T.R. (statutes) 158. Again, in Commissioner of Income-tax v. Fatesinhji Ginning Pressing and Manufacturing Co.Ltd. (1999) 238 I.T.R. 148, the High Court has held that where loose cotton in bulk quantity with lighter density was, as a result of pressing, converted into cotton bales and to that extent it underwent a change, the assessee-company fell within the definition of an 'industrial company' because it processed cotton into cotton bales and was entitled to the concessional rate of tax as provided under the law. We may state that the S.L.P. against the decision of the Gujarat High Court was rejected by the Supreme Court on December 4, 1998, which is evident from (1999) 235 I.T.R. (statutes) 26. In view of the principles laid down in the decisions which are mentioned above, we answer the question referred to us for our opinion in affirmative i.e. in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)